

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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JUSTIN EDMISTEN,

Petitioner,

v.

WILLIAM L. GITTERE, et al.,

Respondents.

Case No. 3:22-cv-00118-RCJ-CLB

ORDER

Justin Edmisten has submitted a pro se 28 U.S.C. § 2254 petition for a writ of habeas corpus. His application to proceed *in forma pauperis* (ECF No. 1) is granted. The court has reviewed the petition pursuant to Habeas Rule 4 and directs that it be served on respondents.<sup>1</sup>

A petition for federal habeas corpus should include all claims for relief of which petitioner is aware. If petitioner fails to include such a claim in his petition, he may be forever barred from seeking federal habeas relief upon that claim. See 28 U.S.C. §2254(b) (successive petitions). If petitioner is aware of any claim not included in his petition, he should notify the court of that as soon as possible, perhaps by means of a motion to amend his petition to add the claim.

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<sup>1</sup> Accordingly, Edmisten's motions seeking preliminary review of the petition are denied as moot (see ECF Nos. 4, 5).

1           **IT IS THEREFORE ORDERED** that petitioner's application to proceed *in forma*  
2 *pauperis* (ECF No. 1) is **GRANTED**.

3           **IT IS FURTHER ORDERED** that the Clerk of Court detach, file, and electronically  
4 SERVE the petition (ECF No. 1-1) on the respondents.

5           **IT IS FURTHER ORDERED** that the Clerk add Aaron D. Ford, Nevada Attorney  
6 General, as counsel for respondents and provide respondents an electronic copy of all  
7 items previously filed in this case by regenerating the Notice of Electronic Filing to the  
8 office of the AG only.

9           **IT IS FURTHER ORDERED** that respondents file a response to the petition,  
10 including potentially by motion to dismiss, within **90 days** of service of the petition, with  
11 any requests for relief by petitioner by motion otherwise being subject to the normal  
12 briefing schedule under the local rules. Any response filed is to comply with the  
13 remaining provisions below, which are entered pursuant to Habeas Rule 5.

14           **IT IS FURTHER ORDERED** that any procedural defenses raised by respondents  
15 in this case be raised together in a single consolidated motion to dismiss. In other  
16 words, the court does not wish to address any procedural defenses raised herein either  
17 in seriatum fashion in multiple successive motions to dismiss or embedded in the  
18 answer. Procedural defenses omitted from such motion to dismiss will be subject to  
19 potential waiver. Respondents should not file a response in this case that consolidates  
20 their procedural defenses, if any, with their response on the merits, except pursuant to  
21 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If  
22 respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they will  
23 do so within the single motion to dismiss not in the answer; and (b) they will specifically  
24 direct their argument to the standard for dismissal under § 2254(b)(2) set forth in  
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1 *Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no procedural  
2 defenses, including exhaustion, should be included with the merits in an answer. All  
3 procedural defenses, including exhaustion, instead must be raised by motion to dismiss.

4 **IT IS FURTHER ORDERED** that, in any answer filed on the merits, respondents  
5 specifically cite to and address the applicable state court written decision and state  
6 court record materials, if any, regarding each claim within the response as to that claim.

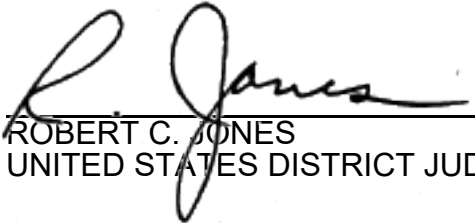
7 **IT IS FURTHER ORDERED** that petitioner has **45 days** from service of the  
8 answer, motion to dismiss, or other response to file a reply or opposition, with any other  
9 requests for relief by respondents by motion otherwise being subject to the normal  
10 briefing schedule under the local rules.

11 **IT IS FURTHER ORDERED** that any additional state court record exhibits filed  
12 herein by either petitioner or respondents be filed with a separate index of exhibits  
13 identifying the exhibits by number. The parties will identify filed CM/ECF attachments  
14 by the number or numbers of the exhibits in the attachment.

15 **IT IS FURTHER ORDERED** that, at this time, the parties send courtesy copies of  
16 any responsive pleading or motion and all **INDICES OF EXHIBITS ONLY** to the  
17 Reno Division of this court. Courtesy copies should be mailed to the Clerk of Court, 400  
18 S. Virginia St., Reno, NV, 89501, and directed to the attention of "Staff Attorney" on the  
19 outside of the mailing address label. **No further courtesy copies are required unless**  
20 **and until requested by the court.**

1           **IT IS FURTHER ORDERED** that petitioner's motion for Rule 4 preliminary rule  
2 and motion for court to follow the statutes (ECF Nos. 4 and 5) are both **DENIED** as  
3 moot.  
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5           DATED: 28 March 2022.  
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8 ROBERT C. JONES  
9 UNITED STATES DISTRICT JUDGE  
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